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10/564,334

01/11/2006

Stefan A. Drumm

AP 10738

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EXAMINER

BURCH, MELODY M

ART UNIT

PAPER NUMBER

3683

MAIL DATE

DELIVERY MODE

03/24/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/564,334 | <b>Applicant(s)</b><br>DRUMM, STEFAN A. |  |
|                              | <b>Examiner</b><br>Melody M. Burch   | <b>Art Unit</b><br>3683                 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 January 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/11/06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference character "44" discussed in paragraph [0044] is not shown in the figures. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
2. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Sheets" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

***Specification***

3. The abstract of the disclosure is objected to because the use of the word "Disclosed" in the first line of the abstract should be deleted. Correction is required. See MPEP § 608.01(b).

4. The disclosure is objected to because of the following informalities:

- In the last line of paragraph [0010] element "(2)" is shown within parentheses but in other areas of the specification, the numbers are not shown within parentheses;
- In paragraph [0015] and particular near the center of pg. 6 the phrase "will follows" should be reworded and the phrase "conduit portion 33" should be changed since reference character "33" appears to refer to the accumulator;
- In paragraph [0016] and particular near the middle of pg. 8 the phrase "pressure sensor 32" should be reworded since reference character 32 appears to refer to the spring (this issue is also located in paragraph [0020]).

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 16, 17, and 22-30 are rejected under 35 U.S.C. 102(b) as being anticipated by EP-1078833 (EP'833).

EP'833 shows in figure 3 an electrohydraulic brake system for a motor vehicle which can be operated in a brake-by-wire mode of operation by both an operator and independently of the operator, the brake system comprising: a master cylinder as shown connectable to wheel brake cylinders, a first piston 2 coupled to a brake pedal as shown, a second piston shown to the right of element 11 for actuating the master cylinder, a third piston 5 which can be operated by the first piston, at least one brake pedal characteristics simulation device shown above the end of the lead line of reference character 21 provided between the first and third piston for imparting a comfortable pedal feel to the operator in a brake by wire mode of operation, a hydraulic chamber cooperating with the brake pedal characteristics simulation device being limited between the first and the third piston wherein all three pistons and the brake pedal characteristics simulation device are arranged in a housing as shown, a hydraulic source shown at the right side of element 22 operable by an electronic control and regulation unit, a valve device 26 operable by the third piston for reducing the pressure of the pressure source to a value used for application of the second piston, wherein the second piston and the third piston are isolated from each other by a space 11 so that the third piston is acted upon by the pressure that acts on the second piston in a direction opposite to a direction of application of the second piston, and a device 15,16,connecting conduits which by way of a variation of the pressure fluid volume in the hydraulic chamber controlled by electromagnetic valve, allows a pedal performance that differs from a brake pedal characteristics that is predefined by the brake pedal characteristics simulation device.

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 16, 24, 25, and 27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 37, 50, 62, and 64, respectively, of copending Application No. 10/563977 in view of EP’833. The 10/563977 application claims an electrohydraulic brake system comprising: a master cylinder, a first piston, a second piston with a pedal simulation device with the pistons and the simulator device arranged in a housing, a hydraulic pressure source, and a valve device to the same extent as the instant application. The 10/563977 application lacks the limitation of the hydraulic chamber and the device being controlled by electromagnetic valve.

9. EP'833 teaches in figure 3 the use of a similar electrohydraulic brake system including a hydraulic chamber 11 and a device 15,16, and connecting conduits that is controlled by electromagnetic valve.

10. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the 10/563977 application to have included a hydraulic chamber and a device, as taught by EP'833, in order to provide a means of controlling fluid flow within the electrohydraulic system to achieve desired braking characteristics as suggested by EP'833.

This is a provisional obviousness-type double patenting rejection.

#### ***Allowable Subject Matter***

11. Claims 18-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents: 4941322 to Nomura et al., 4660897 and 4645272 to Leiber and 4642989 to Belart teach the use of electrohydraulic brake systems including at least three pistons enclosed within a housing coupled with a pressure varying device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 571-272-7114. The examiner can normally be reached on Monday-Friday (6:30 AM-3:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mmb  
March 17, 2008

/Melody M. Burch/  
Primary Examiner, Art Unit 3683